2026 IL App (1st) 250282-U

No. 1-25-0282

Order filed September 10, 2026

FOURTH DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re COMMITMENT OF EDWARD LATKO	)	Appeal from the
	)	Circuit Court of Cook County,
(The People of the State of Illinois,	)	Criminal Division.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 00 CR 80004
	)	
Edward Latko,	)	Honorable
	)	Jennifer F. Coleman,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE MITCHELL delivered the judgment of the court.
Justice Mikva and Presiding Justice Oden Johnson concurred in the judgment.

ORDER

¶ 1 Held: Affirmed. The jury's finding that respondent remained a sexually violent person was not against the manifest weight of the evidence where we defer to the jury's evaluation of the experts' methodologies in diagnosing a mental disorder and assessing the propensity to commit acts of sexual violence. The circuit court did not abuse its discretion as to the scope of expert testimony, comments in closing argument, or respondent's proposed jury instructions.

¶ 2 Respondent appeals a circuit court order denying his petition for discharge based on a jury finding that he remains a sexually violent person under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq*. (West 2022)). The issues presented are (1) whether the jury's finding

was against the manifest weight of the evidence because the State's expert primarily relied on respondent's prior sexual abuse offenses to diagnose him with a current disorder and respondent impeached the State's expert's methodologies; and (2) whether the circuit court abused its discretion in a variety of rulings (individually and cumulatively) related to the scope of expert testimony, comments in closing argument, and respondent's proposed jury instructions. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 1994, respondent Edward Latko was convicted of aggravated criminal sexual assault in the circuit court of Cook County. He was sentenced to 18 years' imprisonment. As the end of his criminal sentence approached, the State filed a petition alleging that respondent was a sexually violent person under the Sexually Violent Persons Commitment Act. 725 ILCS 207/1 *et seq*. A jury adjudicated him a sexually violent person, and the circuit court committed him to the Department of Human Services Treatment and Detention Facility.

¶ 5 In 2022, respondent petitioned the circuit court for discharge from custody. 725 ILCS 207/65(b)(1) (West 2020). The circuit court found probable cause to believe respondent is no longer a sexually violent person. *Id.* The parties proceeded to a hearing before a jury where the State had the burden to show by clear and convincing evidence that respondent is still a sexually violent person under the Act. *Id.* § 65(b)(2).

¶ 6 At the hearing, the circuit court admitted a copy of respondent's certified conviction for aggravated criminal sexual assault. The jury heard testimony from Dr. David Suire, the State's expert witness, and Dr. Brian Abbott, respondent's expert witness. Dr. Suire diagnosed respondent with pedophilic disorder for having an intense and recurrent sexual interest in pre-pubescent

children. Dr. Suire also diagnosed respondent with paraphilia, which he defined as any abnormal sexual attraction that causes a person to harm themselves or others. He also diagnosed him with narcissistic personality disorder.

¶ 7 To diagnose respondent, Dr. Suire primarily relied on respondent's past acts of sexual violence, before his civil commitment. He explained that in 1986, when respondent was approximately 31 years old, he sexually assaulted two 12-year-old boys and one 15-year-old boy. One of the boys reported that respondent sexually assaulted him for at least five years. The assaults included tying up two of the boys and performing oral sex on them in the presence of each other. Dr. Suire also testified that respondent was released on parole in 1990. In 1992, while still on parole, he committed aggravated sexual assault against a five-year-old girl where he pulled the victim's pants down and rubbed his penis against her vagina.

¶ 8 He testified that he believed respondent continues to suffer from the sexual disorders because the symptoms are "pretty enduring," and "by the time you're 31, 37 if those are your sexual urges they're not likely to change." He also noted that respondent reoffended when he was released on parole.

¶ 9 Dr. Suire testified that these disorders create a substantial likelihood that respondent would engage in future acts of sexual violence. Dr. Suire explained that he used risk assessment tools known as the Static-99R and Static-2002R to calculate respondent's "static risk" factors for committing sexual offenses. "Static risk factors are historical or demographic factors that do not change (*e.g.*, prior offenses, victim characteristics) or which only change predictably with the passage of time (*e.g.*, age)." L. Maaike Helmus *et al.*, *Static-99R: Strengths, Limitations, Predictive Accuracy Meta-Analysis, and Legal Admissibility Review*, 28 Psych. Pub. Pol'y & L.

307, 308 (2022). Dr. Suire testified that he calculated respondent's static risk as a three or four. This means respondent has an "average to above average" risk to reoffend.

¶ 10 Dr. Suire also calculated respondent's dynamic risk factors. Unlike static risk factors, dynamic risks are qualitative evaluations, assessing, for example, a person's "procriminal attitudes, deviant sexual interests, and intimacy deficits." *Id.* Dr. Suire testified that respondent presented dynamic risk factors that increase the probability of recidivism.

¶ 11 Dr. Suire testified that he considered potential "protective factors" that might reduce respondent's likelihood to reoffend. He considered respondent's advanced age of 68 years old, physical infirmities, purported erection issues, and the absence of infractions at the detention facility, but he concluded they did not significantly reduce the risk to reoffend.

¶ 12 Finally, Dr. Suire testified that he did not have enough information to conduct a Stable-2007 assessment of respondent. The Stable-2007 evaluates 13 specific risk factors, including "intimacy deficits, atypical sexual interests, emotional identification with children, and lack of cooperation with supervision." Kelly M. Babchishin *et al.*, *Acute-2007 and Stable-2007 Predict Recidivism for Men Adjudicated for Child Sexual Exploitation Material Offending*, 47 L. & Hum. Behav. 606, 608 (2023).

¶ 13 After the State rested, the jury heard testimony from respondent's expert, Dr. Abbott. Dr. Abbott opined that respondent did not suffer from a current mental disorder. He explained that people "tend to remit" and age out of paraphilic and personality disorders. As to pedophilic disorder, Dr. Abbott explained there is insufficient evidence regarding the time of respondent's offenses to determine if he has a sufficiently "recurrent" sexual interest in children to constitute a pedophilic disorder.

¶ 14 Regarding the likelihood to reoffend and commit future sexual offenses, Dr. Abbott gave respondent a lower score of two on the Static-99R assessment. In contrast with Dr. Suire, Dr. Abbott believed there was sufficient information on respondent to conduct an accurate Stable-2007, and he gave respondent a "low" score. He also gave significant weight to the purported protective factors of respondent's age, physical infirmities, erection issues, and absence of infractions at the detention facility.

¶ 15 After the close of evidence, the parties proceeded to closing argument. Respondent objected when the State described the details of respondent's sexual abuses to the jury. The circuit court overruled the objection because the details were bases of the experts' opinions.

¶ 16 The State also argued to the jury that respondent had not participated in mental health treatment during his time at the detention facility, and the mere passage of time is not enough to show he is no longer a sexually violent person. Respondent objected to this statement, arguing that the State was improperly shifting the burden of proof. The circuit court overruled the objection.

¶ 17 The jury found respondent was a sexually violent person under the Act. This timely appeal followed. Ill. S. Ct. R. 606 (eff. Apr. 15, 2024).

¶ 18 II. ANALYSIS

¶ 19 A. Manifest Weight of the Evidence

¶ 20 Respondent argues the jury's finding was against the manifest weight of the evidence because (1) Dr. Suire's diagnoses of current mental disorders relied on respondent's past acts of sexual abuse, prior to his civil commitment, (2) Dr. Suire did not use the "gold standard," Stable-2007 risk assessment to evaluate the probability that respondent would commit future acts of sexual violence, and (3) Dr. Suire failed to give proper weight to various protective factors. The

State argues Illinois courts have consistently held that experts may consider past acts of sexual violence in diagnosing a present mental disorder and the likelihood of future acts of sexual violence. Similarly, the State argues Illinois courts have also held that a person can remain a sexually violent person under the Act despite an absence of sexual infractions while under civil commitment.

¶ 21 We do not disturb a trier of fact's decision on a petition for discharge under the Sexually Violent Persons Commitment Act unless it is against the manifest weight of the evidence. *In re Commitment of Hansen*, 2024 IL App (3d) 230334, ¶ 38. "The manifest-weight standard affords great deference" to the trier of fact. *Id*. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 22 1. *Mental Disorder*

¶ 23 At the discharge hearing, the State had the burden to show by "clear and convincing evidence" that respondent "still" has a "mental disorder." 725 ILCS 207/15(b)(4), 65(b)(2). A mental disorder is a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." *Id.* § 5(b).

¶ 24 In his opinion, Dr. Suire relied on the details of respondent's acts of sexual violence between 1981 and 1992 to diagnose respondent with pedophilic disorder, paraphilic disorder, and narcissistic personality disorder, which Dr. Suire explained predisposes him to commit acts of sexual violence.

¶ 25 Regarding whether respondent "still" had the mental disorders, Dr. Suire noted that respondent was 31 and 37 years old at the time of the offenses, and the scientific research indicates

that adults rarely age out of these disorders. He noted a lack of changed behavior to indicate respondent beat the odds and outgrew his disorders. Because the detention facilities are controlled environments, Dr. Suire did not give much weight to the fact that respondent had not exhibited symptoms while under civil commitment.

¶ 26 To be sure, Dr. Abbott testified that respondent likely grew out of these disorders, if he had them at all. However, "[w]here conflicting expert testimony is presented at trial, it is the trier of fact's duty to resolve that conflict. [Citation.] The appellate court cannot substitute its judgment on questions of fact fairly submitted, tried, and determined from the conflicting evidence." (Internal quotation marks omitted.) *Hansen*, 2024 IL App (3d) 230334, ¶ 40. Against this backdrop of conflicting expert testimony, it is not clearly evident that respondent no longer has a mental disorder under the Act.

¶ 27 Respondent maintains that Dr. Suire's opinion was not reliable because he primarily used respondent's acts of sexual violence between 1987 and 1992. However, there is nothing in the Act or case law prohibiting the State's expert from relying on the details of the original sexual offenses at a discharge hearing. Indeed, Illinois courts have explained that "[w]hile a prior sexually violent offense is not sufficient to establish that a person has a mental disorder, experts are not prohibited from relying on the underlying behaviors manifested during prior offenses in the diagnosis of a particular mental disorder." *In re Detention of White*, 2016 IL App (1st) 151187, ¶ 59. Dr. Suire properly considered the underlying behaviors from respondent's past acts of sexual violence, applied the scientific research on the temporal reach of the mental disorders, and concluded respondent still suffers a mental disorder under the Act. Nothing in the record, including Dr.

Abbott's testimony, indicates this opinion was clearly incorrect or unreasonable. *Best*, 223 Ill. 2d at 350.

¶ 28 2. *Substantial Probability to Commit Acts of Sexual Violence*

¶ 29 The State also had the burden to prove by clear and convincing evidence that respondent's mental disorder still "creates a substantial probability that he *** will engage in acts of sexual violence." 725 ILCS 207/15(b)(5), 65(b)(2). Substantial probability means "much more likely than not." *In re Commitment of Gavin (Gavin III)*, 2024 IL App (1st) 230246, ¶ 44 (citing *In re Detention of Bailey*, 317 Ill. App. 3d 1072, 1086 (2000)).

¶ 30 The jury heard conflicting expert testimony on respondent's likelihood to commit acts of sexual violence. Dr. Suire calculated respondent's static risk score at a three or four, which means respondent is "average to above average" risk and 1.39 to 1.94 times more likely to sexually reoffend than a typical sex offender. In contrast, Dr. Abbott gave respondent a lower score of two.

¶ 31 On cross-examination, Dr. Suire acknowledged that a static score of three only correlates to a 10% chance that respondent would be convicted of a new sexual offense over a 10- to 20-year period. However, he explained the 10% rate only identifies the likelihood of an act of sexual violence that is *detected* and followed by legal intervention, meaning the 10% recidivism rate understates the risk because it does not include the likelihood that respondent will commit an *undetected* act of sexual violence. He also acknowledged on cross-examination that the 10% rate calculates the likelihood of sexual offenses generally, which would include nonviolent sexual offenses such as exposure. But Dr. Suire explained that if respondent reoffended, he believed it would be violent given the nature of his prior offenses.

¶ 32 In lieu of a Stable-2007 assessment, Dr. Suire opined on dynamic risk factors that he believed increased the likelihood to reoffend beyond what was reflected in respondent's static risk score. He cited respondent's "deviant sexual interests," a history of sexualized violence and sexual rituals, lack of employment stability, noncompliance with supervision, and poor cognitive problem solving. Dr. Suire explained that while these dynamic risk factors cannot be aggregated to calculate a specific risk percentage, they increase the risk above what is reflected in his static risk score. See *In re Tittlebach*, 324 Ill. App. 3d 6, 10-12 (2001) (affirming a sexually-violent-person finding where the static risk score yielded a 10% chance of reoffending over the next five years, but the expert considered other methods in conjunction with the static score).

¶ 33 In contrast, Dr. Abbott believed there was sufficient collateral information to conduct a Stable-2007, and he scored respondent "low" on the Stable-2007.

¶ 34 Both experts opined on potential protective factors that might reduce respondent's risk to reoffend. Dr. Suire noted that respondent's advanced age was already accounted for in the static risk assessments. He also considered respondent's diminished physical capacity, including heart problems and difficulty walking and standing. But he explained respondent's victims were children, and respondent could still sexually assault children with diminished physical capacity. Dr. Suire did not view respondent's purported erection issues as a protective factor because at times respondent reported he could achieve erections. He also explained that erections are not required to repeat some of his past acts of sexual abuse, including forced oral sex. Further, Dr. Suire noted that respondent had not taken responsibility for his acts of sexual violence or participated in mental health treatment at the detention facility. Dr. Suire did not give much weight to the fact that respondent had not been cited for sexual infractions at the detention facility because

the facilities are controlled environments. See *In re Commitment of Evans*, 2021 IL App (1st) 192293, ¶ 53 ("Courts have consistently upheld [sexually-violent-person] findings despite the absence of sexually offensive activity while in the controlled environments of prison or the [treatment detention facility].").

¶ 35 In contrast, Dr. Abbott gave significant weight to protective factors. In particular, Dr. Abbott believed age was a significant protective factor. He explained that the static risk assessment only accounted for the fact that respondent had reached the age of 60, and Dr. Abbott believed the likelihood of future acts of violence was further diminished because respondent was 68 years old. He also gave great weight to the fact that respondent had not been cited for any infractions at the detention facility. He explained that even in controlled environments, patients often exhibit behavior that is consistent with child sex abuse such as acquiring child pornography or developing relationships with immature looking inmates.

¶ 36 "Under the manifest weight standard, we give deference to the *** finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses [Citation.] A reviewing court will not substitute its judgment for that of the [trier of fact] regarding the credibility of witnesses ***." *Best*, 223 Ill. 2d at 350-51. It is well-established that "[t]he same rules of weight and credibility that are applicable to other witnesses are used to judge expert testimony." *City of Chicago v. Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, ¶ 76. Here, it was the jury's responsibility to evaluate the expert testimony and determine, among other things, whose static risk calculation was more accurate, whether there was sufficient collateral information to conduct a Stable-2007 assessment, and what probative value to assign the purported protective factors. The experts were cross-examined on their methodologies, and the

jury was capable of parsing the testimony to determine whose opinion was more reliable. See *In re Commitment of Haugen*, 2017 IL App (1st) 160649, ¶ 25 (explaining that respondent's argument in a sexually violent person case was meritless where it "merely attack[ed] the weight to be given to certain evidence—the actuarial tests performed by expert witnesses," and it was "the province of the jury to evaluate the results of any testing along with the other evidence presented to determine whether he was substantially probable to reoffend" (internal quotation marks omitted)); *People v. Pearson*, 2018 IL App (1st) 142819, ¶ 31 ("Defendant's counsel had ample opportunity to cross-examine [the expert witness] on her methodology and analysis before the jury. It is the function of the jury to assess the credibility of witnesses, the weight to be given their testimony, and to resolve conflicts in the evidence.").

¶ 37 Respondent's arguments to the contrary are unavailing. He argues that Dr. Suire's expert testimony was insufficient given the State's heightened burden of proof. However, Illinois appellate courts have explained that a trier of fact "may choose to believe one psychiatrist over another and find in favor of the State's petition even when the State's burden is proof beyond a reasonable doubt." *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 112; see *People v. Bishop*, 2024 IL App (2d) 230106, ¶ 55 ("[A] trier of fact may accept one expert's testimony over another, so long as the accepted opinion is based on a credible diagnosis.").

¶ 38 Respondent argues the State failed to meet its burden of clear and convincing evidence because Dr. Suire failed to use the Stable-2007 assessment method, which Dr. Suire himself testified was the "gold standard" method. Relatedly, he also argues that if Dr. Suire believed there was insufficient collateral information to conduct a Stable-2007, then there must have been insufficient information for Dr. Suire to conduct a reliable dynamic risk assessment, which relies

on similar qualitative evaluations. However, as noted, the jury was tasked with assigning weight to the various risk assessment methodologies. There is nothing in the record to suggest it was unreasonable for the jury to believe Dr. Suire when he testified that, in his professional opinion, a dynamic risk assessment was superior under the circumstances. We decline to determine, as a matter of law, which methodology needs to be used or how much weight should be assigned to the different methods.

¶ 39 Respondent cites *In re Commitment of McCormack*, 2021 IL App (1st) 181930-U, ¶ 40, as an analogous case where the appellate court reversed an order of commitment because the State's expert testimony on the substantial probability prong was insufficient. Among other things, the appellate court explained that the State's expert "left too much to inference" as to precisely how much the dynamic risk factors increased the respondent's likelihood to commit acts of sexual violence. *Id.* ¶¶ 40, 42. Respondent maintains that, in light of *McCormack*, Dr. Suire should have conducted the Stable-2007 assessment because it generates a numerical and more precise result than a dynamic risk evaluation. However, in *McCormack*, the State carried the higher burden of proof beyond a reasonable doubt. *Id*. Further, *McCormack* did not establish a *per se* rule on dynamic risk assessments. The inferential gaps in the expert's dynamic risk testimony were one factor among many that undermined the judgment. *Id.* ¶¶ 31-42. Moreover, Illinois appellate courts have long held that substantial probability "cannot be reduced to a mere mathematical formula." *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188 (2001); *People v. Kallal*, 2024 IL App (4th) 231201-U, ¶ 82 (same). Instead, the jury must "make a commonsense judgment as to whether a respondent falls within the class of individuals who present a danger to society sufficient to outweigh their interest in individual freedom." *Hayes*, 321 Ill. App. 3d at 188.

¶ 40 Respondent also relies on *In re Commitment of Gavin (Gavin III)*, 2024 IL App (1st) 230246. In *Gavin III*, the appellate court reversed an order that the committed person remained a sexually violent person. *Id.* ¶¶ 1, 4. As here, Dr. Suire was the State's only witness. *Id.* ¶ 16. The *Gavin III* court found Dr. Suire's testimony was "arbitrary and not based on the evidence." *Id.* ¶ 66 (citing *McCormack*, 2021 IL App (1st) 181930-U, ¶ 30). The appellate court highlighted some of the same gaps in Dr. Suire's methodologies that respondent raises here. In *Gavin III*, Dr. Suire did not believe the defendant's physical conditions would act as a protective factor, but the appellate court noted that Dr. Suire lacked formal training in how such conditions affect a person's ability to commit acts of sexual violence, and Dr. Suire did not consult other physicians on the matter. *Id.* ¶ 68. The appellate court also described Dr. Suire's dynamic risk assessment as not "replicable" by other clinical psychologists and susceptible to "bias." *Id.* ¶ 67.

¶ 41 However, a key distinction is that Dr. Suire's method in *Gavin III* had other, more significant deficiencies not present here. For example, in *Gavin III*, Dr. Suire calculated the respondent's static risk score using 37 or 38 as respondent's age even though the respondent was 64 years old at the time of the hearing, and he "offered the jury no reason why doing so remained sound scientifically." *Id.*¶¶ 49, 67. This yielded a static risk score of eight, rather than five. *Id.* ¶¶ 49, 51. Thus, the appellate court was rightly concerned that Dr. Suire's opinion lacked scientific rigor given this infirmity in his baseline static risk score. *Id.* ¶¶ 67, 69. Here, none of Dr. Suire's methodologies were undermined to the degree his static score was in *Gavin III*. Rather, the alleged defects in his methodologies were garden-variety credibility determinations for the trier of fact.

¶ 42 Respondent also maintains Dr. Suire failed to account for the State's heightened evidentiary burden. However, it was entirely proper for Dr. Suire to ignore the "clear and

convincing" standard. While experts may opine on ultimate issues, they "should avoid couching [their] opinion as a legal conclusion." *Brettman v. Virgil Cook & Son, Inc.*, 2020 IL App (2d) 190955, ¶ 84. "Courts should decline to admit testimony that is phrased in terms that have a special meaning in the law ***." *Id.* ¶ 85. Dr. Suire properly opined on whether respondent was substantially probable to commit future acts of sexual violence. The jury was tasked with determining whether his methodologies were sufficiently reliable and certain to constitute clear and convincing evidence.

¶ 43 B. The Circuit Court's Rulings

¶ 44 1. *Testimony on Participation in Sex Offender Treatment*

¶ 45 Respondent argues the circuit court improperly permitted Dr. Suire to testify to respondent's lack of participation in treatment at the detention facility. The State argues it was admissible under Illinois Rule of Evidence 703 (eff. Jan. 1, 2011) as basis-of-opinion testimony, and the jury was instructed on the burden of proof and proper use of the testimony.

¶ 46 Respondent contends we should review this testimony as a constitutional burden-shifting issue as the appellate court did in *People v. Giangrande*, 101 Ill. App. 3d 397, 401-02 (1981). However, the improper burden shifting in *Giangrande* occurred at the State's closing argument. *Id.* Illinois burden-shifting case law generally governs the State's arguments, not witness testimony. See *People v. Kliner*, 185 Ill. 2d 81, 154-55 (1998) (collecting cases). Because respondent challenges Dr. Suire's testimony, its admission raised an evidentiary question. We review evidentiary matters for an abuse of discretion. *In re Detention of Melcher*, 2013 IL App (1st) 123085, ¶ 42. We will find an abuse of discretion if the circuit court's decision is "unreasonable, arbitrary, or where no reasonable person would take the same view as the court."

In re Commitment of Anderson, 2014 IL App (3d) 121049, ¶ 15. "If a trial court abuses its discretion, a new trial should be ordered only if the exclusion of evidence appears to have affected the outcome of the trial." *Troyan v. Reyes*, 367 Ill. App. 3d 729, 732 (2006).

¶ 47 "[A]n expert may give his opinion based upon facts that are not in evidence if those facts are of a type reasonably relied upon by experts in the particular field." *People v. Nieves*, 193 Ill. 2d 513, 527-28 (2000); Ill. R. Evid. 703 (eff. Jan. 1, 2011). "Although the expert is permitted to testify to them, *** the basis of an expert's opinion must not be presented to the jury as substantive evidence of the underlying assertions." *In re Commitment of Tenorio*, 2020 IL App (1st) 182608, ¶ 44.

¶ 48 Rule 703, however, "does not guarantee the admissibility of all expert testimony that meets its criteria if such testimony runs afoul of other evidentiary requirements." (Internal quotation marks omitted.) *City of Chicago v. Anthony*, 136 Ill. 2d 169, 186 (1990). Basis-of-opinion testimony that is "otherwise admissible under Rules 702 and 703 may still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." (Internal quotation marks omitted.) *Id.*

¶ 49 At trial, Dr. Suire testified on direct examination that there was a dearth of evidence to suggest respondent has changed over the course of his detention. He specifically noted respondent had not participated in treatment and had not accepted responsibility for his prior conduct:

> "Q. And those Static scores they're mostly based on things that happened in the past, right?
> A. Generally.
> Q. So to consider—You also should probably consider things that are happening now, right?
> A. Absolutely.
> Q. How do you do that?

A. What you look at—that is one reason that we do yearly reexams is exactly that, to consider, well, Mr. Latko's here, he's been at the facility for a while. Has he done anything that would suggest he's dealt with his risk? Has he gone to treatment? Has he acknowledged his offenses? Has he bettered himself educationally? I mean, what's the overall picture of the person, what are they doing to improve themselves and particularly to deal with the issues that would be related to their sex offense risk. So that would be something I would always want to look at.

***

Q. Now what would you like to see specifically for Mr. Latko in treatment so that you could opine that his risk is lowered?

[RESPONDENT'S ATTORNEY]: Objection.

THE COURT: Basis?

[RESPONDENT'S ATTORNEY]: Shifting the burden and renewing our fourth motion *in limine*.

THE COURT: Overruled.

A. What I would like, the first thing I would like to see is for Mr. Latko to fully take responsibility for his sexual offending history, acknowledge it, and acknowledge his interest in children. As far as I know, he's never done those things. That would be the first step. ***. Mr. Latko is still saying he doesn't have a child attraction problem, but he pretty obviously does. So I think he needs to deal with that, No. 1.

After that it would be, as I talked about, coming to an understanding of why specifically did you offend against the children you offended against in the situations you offended against. And down the road when you're exposed to risk in the community when we let you out, what are you going to do different? Because to me, that's always the key question. People get older and they do change with age. But at some level a lot of people are just the same guy but older.

Mr. Latko, I want to know that he's done something to tell me that he's got different tools than he had when he was last in the community. Because last time in the community he reoffended. I want to know that he's able to manage that risk, that he's developed an understanding—I've acknowledged I've got this problem, here's the way it plays out, here's how I'm going to deal with it. That's what I want to see him do."

¶ 50 Here, Dr. Suire plainly described respondent's inaction at the treatment center as basis-of-opinion testimony. He explained that people do not necessarily age out of their mental disorders and propensity to commit acts of sexual violence, and he needed to consider respondent's behavior at the detention facility to evaluate his present condition. Thus, it was admissible under Rule 703.

¶ 51 As to the balancing test, it was key testimony so the jury could understand that Dr. Suire did not diagnose respondent solely on his conduct from the 1981 and 1992 offenses and why Dr.

Suire did not view respondent's conduct at the detention facility as a protective factor. Accordingly, it was highly probative to the State's case. Ill. R. Evid. 403. To be sure, there was *some* risk for unfair prejudice or confusion that the jury might believe respondent bore the evidentiary burden to show he was no longer sexually violent. *Id.* But the risk was low because Dr. Suire was careful to explain throughout his testimony that respondent's inaction was not affirmative data of a mental disability or propensity to commit acts of sexual violence. Therefore, the circuit court did not abuse its discretion. Ill. Rs. Evid. 703, 403.

¶ 52 Further, even if the testimony was inadmissible, "[t]he party seeking reversal bears the burden of demonstrating prejudice." *Browning v. Advocate Health & Hospital Corp.*, 2023 IL App (1st) 221430, ¶ 49. Nothing indicates the testimony affected the outcome of the case where the jury was instructed on the burden of proof and basis-of-opinion testimony. "There is a strong presumption that jurors follow the instructions given by the court." *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 605, 611 (2007) (affirming a sexually-violent-person order where the jury received a limiting instruction on the proper use of the details of the respondent's past acts of sexual violence).

¶ 53 2. *Burden Shifting at Closing*

¶ 54 Respondent argues the State shifted the burden of proof at closing and denied respondent a fair trial where it stated the mere passage of time is not enough to show respondent is no longer sexually violent. Respondent maintains this comment improperly suggested that he bore the evidentiary burden. The State argues the passage of time was properly presented to the jury as a basis of Dr. Suire's expert testimony.

¶ 55 The parties also dispute the standard of review. The State argues the issue should be reviewed for plain error because respondent failed to object to this portion of the State's closing. See *People v. Moss*, 205 Ill. 2d 139, 168 (2001). However, the issue was preserved. Respondent made numerous objections to the State's use of the absence of evidence that respondent changed his behavior at the detention facility. Respondent objected during the experts' testimony and at other points in closing, which the circuit court overruled. Attorneys are "not *** required to make repeated objections to improper arguments where the attitude of the [circuit] court is clear, and repetition of the objections would aggravate the situation and tend to prejudice the jury." *Schoolfield v. Witkowski*, 54 Ill. App. 2d 111, 128-29 (1964).

¶ 56 The Illinois Supreme Court established a two-step process for reviewing an overruled objection to a prosecutorial comment at closing argument:

> "[W]e have created a unique two-step process for determining whether a [circuit] court's decision to overrule a defendant's objection to a prosecutorial comment in closing argument is reversible error. A reviewing court must initially determine whether the comment was improper. If so, the court must then determine whether the improper comment was so prejudicial that real justice was denied or the verdict resulted from the error. [Citation.] A [circuit] court's decision to overrule an objection to a comment in prosecutorial closing argument will not be overturned absent an abuse of discretion." *People v. Williams*, 2022 IL 126918, ¶ 41.

¶ 57 At the end of its closing argument, the State commented on how the passage of time is not enough to show respondent is no longer a sexually violent person:

> "In looking at the whole of this respondent, it's clear that he continues to suffer from a mental disorder and that he continues to remain substantially probable to reoffend. As you heard Dr. Suire testify to, it's the same person in an older body. There's nothing to show that there's been a change other than the passage of time. And we believe that the passage of time is simply insufficient here to show that he's no longer substantially probable."

¶ 58 Although commitment proceedings are civil, "a respondent who is tried under the Act has all the constitutional rights of a criminal defendant." *In re Detention of Kortte*, 317 Ill. App. 3d 111, 115 (2000). "[A] criminal defendant has no duty to produce evidence at trial, and the State may never shift its burden of proof to a defendant." *People v. Mudd*, 2022 IL 126830, ¶ 34. "[S]hifting the burden of proof, whether it be of production or of persuasion, to a defendant in a criminal trial violates due process under both the state and federal constitutions." *People v. Steele*, 366 Ill. App. 3d 220, 222 (2006).

¶ 59 The State's comment that the passage of time is not enough referred to a basis for Dr. Suire's medical expert testimony on a critical issue: how the passage of time affects a person's propensity to commit acts of sexual violence. Dr. Abbott gave great weight to the passage of time as a protective factor, and Dr. Suire gave less. This was a key methodological dispute that the jury needed to resolve. It was proper for the State to remind the jury that, in Dr. Suire's medical opinion, the propensity to commit acts of sexual violence is generally a lifelong condition, and the passage of time did not reduce respondent's risk below the legal threshold as defendant's expert contended.

¶ 60 Moreover, "[c]omments in closing argument must be considered in context of the entire closing argument of both the State and the defendant." *People v. Ceja*, 204 Ill. 2d 332, 357 (2003). The State prefaced its remark by stressing that respondent does not have to participate in treatment at the facility:

> "Finally, we look at treatment. Again – I'm going to say it again – he doesn't have to participate. It's his right. He does not have to go to the facility and participate in treatment. It's there for him. Doesn't have to do it. However, treatment can serve to decrease risk because as we heard Dr. Suire say, in treatment you hear about your triggers, what caused you to offend, we hear about what you can do once you're back out in the community to not do it again. Treatment can decrease risk. Dr. Suire didn't sit up here and testify that not participating in treatment increases his risk. Because that would be not appropriate, not correct. But what he said is participating meaningfully in treatment can

> give him the tools to reduce his risk. And that's just not something present for this respondent, for Mr. Latko."

The State also explicitly acknowledged in rebuttal that it bore the evidentiary burden: "Counsel's right that we hold the burden in this case. That is a burden that we welcome. It is clear and convincing evidence."

¶ 61 Respondent cites an inapposite burden shifting case, *People v. Giangrande*, 101 Ill. App. 3d 397, 402 (1981). There, the State improperly asked the jury at closing, "where's the evidence?" *Id.* The appellate court explained that the comment "may well have improperly suggested to the jury that defendant had a burden to introduce evidence." *Id.* The State's comment that the passage of time was insufficient to reduce respondent's probability of committing future acts of sexual violence specifically referred to a basis of Dr. Suire's testimony, not the respondent's evidentiary burden at trial, and context reveals that any potential jury confusion was mitigated.

¶ 62 3. *Vouching for Witness Credibility at Closing*

¶ 63 Respondent also argues this portion of the State's closing improperly asserted the prosecutor's personal belief and vouched for Dr. Suire's credibility. Because respondent did not object to improper personal opinion or vouching at trial, we review for plain error. *Moss*, 205 Ill. 2d at 168. "The plain error doctrine provides a limited and narrow exception to forfeiture." *People v. Gladney*, 2020 IL App (3d) 180087, ¶ 19. Under plain-error review, we apply a two-prong test and ask whether:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

"The first step of plain-error review is determining whether any error occurred." *Id.* "[T]he burden of persuasion rests with the defendant." *Id.*

¶ 64 At closing argument, "[p]rosecutors may argue the credibility of witnesses," but they may not "bolster a witness's credibility with the power of the prosecutor's office." *People v. Jackson*, 2017 IL App (1st) 142879, ¶ 63. The risk is that it might give jurors the impression that the State has "secret evidence" or "it might induce jurors to trust the State's judgment over their own evaluation of the evidence." (Internal quotation marks omitted.) *Id.*

¶ 65 Here, the only statement that approached personal opinion or vouching was when the State said, in the context of explaining Dr. Suire's testimony, "we believe that the passage of time is simply insufficient here to show that he's no longer substantially probable."

¶ 66 On appeal, respondent has the burden to show plain error, *Thompson*, 238 Ill. 2d at 613, but his brief solely relies on an inapposite case comparison to *People v. Rogers*, 172 Ill. App. 3d 471, 476-77 (1988). In *Rogers*, the State said in closing: "Dominic Iasparro. Steve Pirages. What can I say about Dominic Iasparro and Steve Pirages, seasoned veterans on the police force. Credibility untouchable. Important testimony. *** [B]elieve me you look at Iasparro and Pirages and they won't get on the stand and lie and make up something." *Id.* These expressions of personal opinion and credibility vouching were far more direct and inflammatory than the allegedly improper remarks in this case. *Rogers* is not a sufficient case comparison to demonstrate the State's commentary here was improper, let alone constituted clear or obvious error. Thus, respondent failed to meet his burden to show plain error. See *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) ("Defendant has failed to meet his burden of establishing plain error.").

¶ 67 4. *Basis of Opinion Testimony at Closing*

¶ 68 Relatedly, respondent argues the State's closing improperly used basis-of-opinion testimony as substantive evidence when it recounted the details of respondent's sexual offenses from 1981 and 1992. The State argues it was properly used to discredit Dr. Abbott's expert testimony.

¶ 69 Because the circuit court overruled respondent's objection to this portion of the State's closing, we apply the two-step standard of review from *Williams*, 2022 IL 126918, ¶ 41. The first step is to "determine whether the comment was improper." *Id.* If so, we assess prejudice at the second step. *Id.*

¶ 70 At trial, the circuit court overruled respondent's objection to the State's commentary at closing on the details of respondent's sexual offenses:

> "[ASSISTANT STATE'S ATTORNEY]: I thought it was interesting, too, that Dr. Abbott said—it was in passing but I caught it—that he did not have pedophilic disorder when he offended. He had behaviors of pedophilic disorder but he couldn't say that that was driven by urges and fantasies about children. He tied up little kids. He performed oral sex on them. He had them perform—
> [RESPONDENT'S ATTORNEY]: Objection.
> THE COURT: Overruled.
> [RESPONDENT'S ATTORNEY]: Basis of opinion.
> THE COURT: Overruled.
> [ASSISTANT STATE'S ATTORNEY]: He had them perform oral sex on him. With the five-year-old little girl he rubbed his penis against her.
> [RESPONDENT'S ATTORNEY]: Objection.
> THE COURT: Overruled. This is the basis for the doctor's opinion.
> [ASSISTANT STATE'S ATTORNEY]: And that doesn't make Dr. Abbott have a basis of opinion that he has pedophilic disorder? Again, you don't leave your common sense at the door. Why else did he affect and hurt those little kids? Because he has pedophilic disorder."

¶ 71 This was not improper. The State discussed the details in closing only to discredit Dr. Abbott's diagnosis. Illinois appellate courts have repeatedly found that in sexually-violent-person hearings, the State may comment on the details of prior acts of sexual violence in closing, so long

as it is properly contextualized. See, *e.g.*, *In re Commitment of Jackson*, 2023 IL App (1st) 221303-U, ¶ 81 (finding it was proper to allow the State to discuss the details of respondent's acts of sexual violence because "the State prefaced its remarks by informing the jury" that the details were bases of the experts' opinion); *Tenorio*, 2020 IL App (1st) 182608, ¶ 47 (finding the State's references to respondent's prior sexual offenses were proper where the State "emphasized" that the sexual offenses were part of the experts' diagnoses); see also Ill. Rs. Evid. 403, 703. Thus, the State's closing was proper, and the circuit court did not abuse its discretion. *Williams*, 2022 IL 126918, ¶ 41.

¶ 72 Respondent cites two inapposite cases, *In re Commitment of Gavin (Gavin I)*, 2014 IL App (1st) 122918, and *Smith v. Arizona*, 602 U.S. 779 (2024). In *Gavin I*, the appellate court found that the "the State repeatedly referred to the underlying facts *as something other than the basis for the experts' opinions*." (Emphasis added.) 2014 IL App (1st) 122918, ¶ 73. Here, the State plainly commented on the details of the sexual offenses only to discredit Dr. Abbott's testimony.

¶ 73 Next, *Smith* is distinguishable because it is a testimonial hearsay case under the sixth amendment's confrontation clause. *Smith*, 602 U.S. at 783 (citing *Crawford v. Washington*, 541 U.S. 36 (2004)). Respondent homes in on the Court's statement that "[w]hen an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth." *Id.* In turn, respondent maintains Dr. Suire's basis-of-opinion testimony could only have been used as substantive evidence. But the *Smith* court itself stated that "the Confrontation Clause's requirements apply only when the prosecution uses out-of-court statements for the truth of the matter asserted." (Internal quotation marks omitted.) *Id.* There is no suggestion that Dr. Suire's basis-of-opinion testimony was hearsay,

see Ill. R. Evid. 801(c) (eff. Oct. 15, 2015), nor that it was testimonial, see *Michigan v. Bryant*, 562 U.S. 344, 357-58 (2011) (explaining a statement is testimonial when made with "a primary purpose of creating an out-of-court substitute for trial testimony"). Respondent cites no cases that have applied *Smith* outside the confrontation-clause context, and we decline to do so here.

¶ 74 5. *Proposed Jury Instructions*

¶ 75 Respondent also argues the circuit court abused its discretion in denying his proposed jury instructions where the instructions accurately and succinctly stated the law. Generally, we review a circuit court's decision to decline a proposed jury instruction for abuse of discretion. *People v. Mohr*, 228 Ill. 2d 53, 65-66 (2008).

¶ 76 Respondent proposed the following instructions concerning the sufficiency of the evidence in a sexually-violent-person case, which were denied by the circuit court: (1) "[t]he law does not require a person to participate in or complete treatment as a prerequisite to finding that the person is no longer a sexually violent person," and (2) "[p]articipation in treatment is not the sole factor in determining whether the State met its burden of proving that [r]espondent is still a sexually violent person."

¶ 77 "[T]he purpose of jury instructions is to provide the jury with correct legal principles that apply to the evidence, thus enabling the jury to reach a proper conclusion based on the applicable law and the evidence presented." *People v. Parker*, 223 Ill. 2d 494, 500 (2006). On appeal, "[t]he task of a reviewing court is to determine whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *Mohr*, 228 Ill. 2d at 65. Respondent's brief provided no analysis (or citation to the record) of the instructions that were submitted to the jury, so we cannot assess whether the jury was properly instructed.

Accordingly, the issue is waived. See *People v. Ballard*, 2022 IL App (1st) 210762, ¶ 25 ("A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. [Citation.] Issues that are ill-defined and insufficiently presented do not satisfy [Illinois Supreme Court Rule 341(h)(7)] and are considered waived." (Internal quotation marks omitted.)).

¶ 78 6. *Cumulative Error*

¶ 79 Respondent argues these errors cumulatively deprived him of a fair trial. See *People v. Green*, 2017 IL App (1st) 152513, ¶ 117 (explaining cumulative error). However, because we find no error below, respondent is not entitled to a new trial on the basis of cumulative error. See *People v. Caffey*, 205 Ill. 2d 52, 118 (2001) ("We have concluded either that no error occurred at all, or any error that may have occurred did not rise to the level of plain error. Accordingly, defendant is not entitled to a new trial on the basis of cumulative error.").

¶ 80 III. CONCLUSION

¶ 81 For these reasons, the judgment is affirmed.

¶ 82 Affirmed.